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 FPD Appointed CJA Pro Per Retained

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KRISTEN BIEL,
an individual,

PLAINTIFF(S),

ST. JAMES SCHOOL, A CORP,
a California corporation

DEFENDANT(S).

CASE NUMBER:

2:15-cv-04248 TJH (ASX)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiff, KRISTEN BIEL *Name of Appellant* hereby appeals to the United States Court of Appeals for the Ninth Circuit from:

Criminal Matter

- Conviction only [F.R.Cr.P. 32(j)(1)(A)]
- Conviction and Sentence
- Sentence Only (18 U.S.C. 3742)
- Pursuant to F.R.Cr.P. 32(j)(2)
- Interlocutory Appeals
- Sentence imposed:

Bail status:

Civil Matter

- Order (specify):
Order Granting Motion for Summary Judgment [Docket No. 96]
- Judgment (specify):
Amended Order and Judgment re Order on MSJ [Docket No. 98]
- Other (specify):

Imposed or Filed on 01/24/2017. Entered on the docket in this action on 01/24/2017.

A copy of said judgment or order is attached hereto.

February 10, 2017

Date


Signature

Appellant/ProSe Counsel for Appellant Deputy Clerk

Note: The Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, if not electronically filed in a criminal case, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of FRAP 3(d).

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United States District Court
Central District of California
Western Division

12 KRISTEN BIEL,

CV 15-04248 TJH (ASx)

13 Plaintiff,

14 v.

Order and Judgment

15 ST. JAMES SCHOOL,

JS-6

16 Defendant.

17 The Court has considered the St. James School's ["St. James"] motion for
18 summary judgment, together with the moving and opposing papers.

19 This motion concerns whether Plaintiff Kristen Biel was a "minister" within the
20 meaning of the "ministerial exception" to Title VII of the Civil Rights Act of 1964 , 42
21 U.S.C. § 2000e, *et seq.*, ["Title VII"] and is, therefore, barred from bringing the
22 instant action under the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq*
23 ["ADA"].

24 St. James hired Biel in 2013 as a first grade substitute teacher. In June, 2013,
25 Sister Mary Margaret, St. James's principal, hired Biel as a full-time fifth grade teacher
26 — with the title of "teacher" — for the 2013–14 school year. Upon accepting the
27 position, Biel signed an employment contract stating that St. James's mission is "to
28 develop and promote a Catholic school faith community within the philosophy of

1 Catholic education as implemented at St. James, and the doctrines, laws, and norms of
2 the Catholic Church.” Further, Biel agreed to perform “[a]ll duties and responsibilities
3 . . . within St. James’s overriding commitment to developing its faith.” Under her
4 employment contract, Biel was required to “model, teach, and promote behavior in
5 conformity to the teaching of the Roman Catholic Church.”

6 In addition to teaching secular subjects, Biel taught a thirty-minute religion class
7 to her students four days per week, and was required to dedicate a minimum of 200
8 minutes every week to the subject of religion. The religion course was grounded upon
9 the norms and doctrines of the Catholic Faith, including the sacraments of the Catholic
10 Church, social teachings according to the Catholic Church, and the overall Catholic way
11 of life. For instance, Biel taught her students the significance of the Lent season, the
12 Last Supper, Easter, the Eucharist, and Reconciliation. As a teaching guide for the
13 religion course, Biel used a Catholic textbook, entitled “Coming to God’s Life,” from
14 which Biel gave her students weekly tests. Further, Biel was required to pray with her
15 students, and did so twice a day. Biel, also, incorporated the Catholic faith into the
16 secular curriculum she taught. During her tenure at St. James, Biel attended a four-to-
17 five hour conference regarding ways to better incorporate God into lessons at the Los
18 Angeles Religious Education Congress.

19 In April, 2014, Biel was diagnosed with cancer and informed Sister Mary
20 Margaret. In June, 2014, Sister Mary Margaret informed Biel that St. James would not
21 be renewing her contract for the 2014–2015 school year. In June, 2015, Biel filed this
22 suit alleging six claims under the ADA. St. James, now, moves for summary judgment
23 as to all six claims.

24

25 **Discussion**

26 In a motion for summary judgment, when the moving party has the burden of
27 proof at trial, as St. James has here on its affirmative defense, the moving party has the
28 initial burden of establishing a *prima facie* case. *See Celotex Corp. v. Catrett*, 477 U.S.

1 317, 323 (1986). If St. James satisfies its burden, the burden will shift to Biel to
2 introduce evidence sufficient to raise a triable issue. *See Celotex Corp.*, 477 U.S. at
3 323. Each fact relied upon in this Order is undisputed.

4 St. James argued that Biel’s claims — all brought under the ADA, and,
5 consequently, Title VII — are barred under the ministerial exception. The ministerial
6 exception bars Title VII claims where the employer is a religious institution and the
7 employee is a “minister.” *See Hosanna-Tabor Evangelical Lutheran Church & Sch.*
8 *v. E.E.O.C.*, 132 S. Ct. 694, 704 (2012) [“*Hosanna-Tabor*”]. The ministerial
9 exception is an exception to Title VII “grounded in the First Amendment, that precludes
10 application of such legislation to claims concerning the employment relationship
11 between a religious institution and its ministers.” *Hosanna-Tabor*, 132 S. Ct. at 705
12 (footnote omitted). The ministerial exception “is intended to protect the relationship
13 between a religious organization and its clergy from constitutionally impermissible
14 interference by the government.” *Werft v. Desert Sw. Annual Conference of United*
15 *Methodist Church*, 377 F.3d 1099, 1101 (9th Cir. 2004) (footnote and internal
16 quotations omitted).

17 Here, there is no dispute that St. James, as a Catholic school, is a religious
18 institution. Accordingly, the application of the ministerial exception turns on whether
19 Biel was a “minister.” *See Hosanna-Tabor*, 132 S. Ct. at 705.

20 Whether Biel is a minister depends on all the circumstances of Biel’s
21 employment, including her education before and during her tenure, her title, and her
22 job duties. *See Hosanna-Tabor*, 132 S. Ct. at 707. “The paradigmatic application of
23 the ministerial exception is to the employment of an ordained minister . . . [b]ut the
24 ministerial exception encompasses more than a church’s ordained ministers.” *Alcazar*
25 *v. Corporation of the Catholic Archbishop of Seattle*, 627 F.3d 1288, 1291 (2010). The
26 ministerial exception may apply “notwithstanding the assignment of some secular
27 responsibilities.” *Alcazar*, 627 F.3d at 1293.

28 In *Hosanna-Tabor*, the teacher at a religious school taught a forty-five minute

1 religion class four days a week in addition to teaching math, language arts, social
2 studies, science, gym, art, and music. *Hosanna-Tabor*, 132 S. Ct. at 700, 709. The
3 teacher, also, led the students in prayer and devotional exercises each day, and attended
4 a weekly school-wide chapel service, which she led about twice a year.
5 *Hosanna-Tabor*, 132 S. Ct. at 700. Additionally, the teacher held the title of “called
6 teacher,” a reference to teachers at the school who had satisfied certain academic and
7 other requirements, and were deemed by the school to have “been called to their
8 vocation by God through a congregation.” *Hosanna-Tabor*, 132 S. Ct. at 700. After
9 taking disability leave, and subsequently losing her position at the school, the teacher
10 sued the school under the ADA. *Hosanna-Tabor*, 132 S. Ct. at 700–01. Upon appeal
11 to the Supreme Court, the Court held that the circumstances of the teacher’s job —
12 particularly the teacher’s title, the teacher’s efforts to hold herself out as a minister, and
13 the teacher’s job duties — established that the teacher was a “minister” within the
14 meaning of the ministerial exception. *Hosanna-Tabor*, 132 S. Ct. at 707–10. In so
15 holding, the Court expressly rejected the notion that the teacher was not a minister
16 because “her religious duties consumed only 45 minutes of each workday, and that the
17 rest of her day was devoted to teaching secular subjects.” *Hosanna-Tabor*, 132 S. Ct.
18 at 709.

19 Here, St. James has established a *prima facie* case that Biel was a minister
20 because her employment contract and job duties demonstrate that her “job duties
21 reflected a role in conveying the Catholic Church’s message and carrying out its
22 mission.” See *Hosanna-Tabor*, 132 S. Ct. at 708. Just as the plaintiff in
23 *Hosanna-Tabor* taught religion and prayed with her students, Biel conveyed the Catholic
24 Church’s message by teaching religion to her students four times each week for thirty
25 minutes, by administering and evaluating weekly tests from a Catholic textbook,
26 “Coming to God’s Life,” and by praying with the students twice each day. See
27 *Hosanna-Tabor*, 132 S. Ct. at 700, 708. Further, Biel clearly sought to carry out St.
28 James’s Catholic mission by, for example, including Catholic teachings into all of her

Case 2:15-cv-04248-TJH-AS Document 96 Filed 01/17/17 Page 5 of 5 Page ID #:1443

1 lessons and attending a conference to learn techniques for incorporating religious
2 teachings into her lessons.

3 Although this case does not contain all of the hallmarks of ministry identified in
4 *Hosanna-Tabor*, it is clear that *Hosanna-Tabor* was not intended to represent the outer
5 limits of the ministerial exception. *See Hosanna-Tabor*, 132 S. Ct. at 707. Instead,
6 the question is whether the claims at issue may interfere with St. James's ability to
7 choose who will convey its message. *See Bolland v. California Province of the Soc'y*
8 *of Jesus*, 196 F.3d 940, 946 (9th Cir. 1999). For the reasons discussed above, St.
9 James has established a *prima facie* case that Biel acted as a messenger of St. James'
10 faith. *See Hosanna-Tabor*, 132 S. Ct. at 708. Therefore, St. James established a *prima*
11 *facie* case Biel was a minister withing the meaning of the ministerial exception.

12 Further, because all facts relied upon in this Order are undisputed by the parties,
13 Biel did not raise a triable issue of fact that would bar the granting of summary
14 judgment. *See Celotex Corp.*, 477 U.S. at 323.

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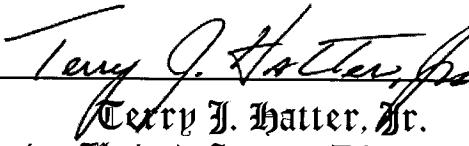
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17 Therefore,

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19 It is Ordered that the motion for summary judgment be, and hereby is,
20 Granted.

21 Date: January 17, 2017

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23 Terry J. Hatter, Jr.
24 Senior United States District Judge
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United States District Court
Central District of California
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CV 15-04248 TJH (ASx)

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27 mission." See *Hosanna-Tabor*, 132 S. Ct. at 708. Just as the plaintiff in
28 *Hosanna-Tabor* taught religion and prayed with her students, Biel conveyed the Catholic

Case 2:15-cv-04248-TJH-AS Document 98 Filed 01/24/17 Page 5 of 6 Page ID #:1450

1 Church's message by teaching religion to her students four times each week for thirty
2 minutes, by administering and evaluating weekly tests from a Catholic textbook,
3 "Coming to God's Life," and by praying with the students twice each day. *See*
4 *Hosanna-Tabor*, 132 S. Ct. at 700, 708. Further, Biel clearly sought to carry out St.
5 James's Catholic mission by, for example, including Catholic teachings into all of her
6 lessons and attending a conference to learn techniques for incorporating religious
7 teachings into her lessons.

8 Although this case does not contain all of the hallmarks of ministry identified in
9 *Hosanna-Tabor*, it is clear that *Hosanna-Tabor* was not intended to represent the outer
10 limits of the ministerial exception. *See Hosanna-Tabor*, 132 S. Ct. at 707. Instead,
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14 James has established a *prima facie* case that Biel acted as a messenger of St. James'
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16 *facie* case Biel was a minister withing the meaning of the ministerial exception.

17 Further, because all facts relied upon in this Order are undisputed by the parties,
18 Biel did not raise a triable issue of fact that would bar the granting of summary
19 judgment. *See Celotex Corp.*, 477 U.S. at 323.

20
21 Therefore,

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23 It is Ordered that the motion for summary judgment be, and hereby is,
24 Granted.

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26 It is Further Ordered, Adjudged, and Decreed that judgment be, and
27 hereby is, Entered in favor of Defendant St. James School and against Plaintiff Kristen
28 Biel.

1 **It is Further Ordered, Adjudged, and Decreed that Plaintiff Kristen Biel**
2 shall take nothing and that all parties shall bear their own costs.

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4 Date: January 24, 2017

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6 Terry J. Hatter Jr.
7 Senior United States District Judge

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PROOF OF SERVICE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 21052 Oxnard Street, Woodland Hills, CA 91367.

On February 10, 2017, I caused service of **PLAINTIFF'S NOTICE OF APPEAL** on the following party in this action by electronically filing the foregoing with the Clerk of the U.S. District Court using its CM/ECF System, which electronically notifies them.

Daniel R. Sullivan, Esq.
Brian L. Williams, Esq.
SULLIVAN, BALLOG & WILLIAMS, LLP
400 North Tustin Avenue, Suite 120
Santa Ana, California 92705
Telephone: (714) 541-2121
Facsimile: (714) 541-2120
Emails: drs@sullivanballog.com; blw@sullivanballog.com

Attorneys for: Defendant, ST. JAMES SCHOOL, A CORP.

(Federal) I declare under penalty of perjury that the foregoing is true and correct and that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on February 10, 2017 at Woodland Hills, California.

W.E.

Tad Kuchar